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Special Report

THE REEB MURDER TRIAL

- Justice in an Alienated Community
  by Rev. Walter Royal Jones, Jr.,
  Chairman, Unitarian Universalist
  Commission on Religion and Race

- The Reeb Murder Trial
  by Daniel B. Bickford,
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I. JUSTICE IN AN ALIENATED COMMUNITY

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The General Situation in Selma

Selma is getting ready for Christmas. The pervasive shabbiness of Broad Street is partly concealed, partly accented by the bright decorations which, especially at night, give an air of commercial gaiety. But Selma is still a town out of another generation. There are a few contemporary bank buildings and stores, but by and large the architecture dates from the 19th century and earlier, more often decrepit than graceful. As one approaches the Edmund Pattus Bridge from Highway 80, one sees a billboard extending welcome from the Selma National Bank. Selma, it proclaims, is "the Town With 100% Human Interest."

On the surface, little tension is visible. Negroes can be seen patronizing Broad Street stores alongside whites, despite a partial boycott. Dolls for Negro girls grace the windows of the five-and-ten-cent store, alongside white dolls. There seems to be full freedom of movement for Negro shoppers.

Although it takes a while to penetrate, however, the tension is there. I was only one of many outsiders in Selma the week of the trial, of course. But my presence was noted. In the courtroom, where I sat beside Daniel Bickford, a Boston attorney also observing the trial for the Unitarian Universalist Association, I heard whispered speculation whether we were Department of Justice lawyers. In restaurants, the strange face was noted, with many a lengthy and inquiring glance. In the Negro section, on the other hand, quite to my surprise, there were some who allowed as having recognized me from March ninth. Whatever the case of memory, identification with the Unitarian Universalist Association was an instant open-sesame.

Monday evening (December 6) I retraced the steps of the march to the bridge, having parked--quite by coincidence--directly in front of Walker's Cafe. The highway and streets bore nothing but traffic, this night. Traffic, and the ghosts of another day. It seemed a longer walk, than in the tension of that other afternoon, with the Sheriff's deputies lining the streets, taking photographs, and making cryptic radio reports from their patrol cars.

I stopped at the parsonage of the Brown Memorial Chapel, to inquire after Lonzey West, who might put me in touch with the Rev. Francis Walter, an Episcopal priest who is our interreligious "man in Selma." He is the new director of the Selma Inter-Religious Ministry. At West's home, and later in the Brown Chapel where Dr. Martin Luther King, Jr., once again spoke on Tuesday night, I learned about the SCLC boycott of downtown stores, and the projected march to protest segregated southern justice.

The trail to Francis Walter took me first to Father MacNeice of St. Edmund's Mission, and thence to Rev. Everett Wenrick, an Episcopal theological student who, with his wife, has teken up residence in Selma to continue the witness of the martyred Jonathan Daniels. Wenrick is working on the Poverty Program, and has so far succeeded in maintaining tenuous contacts with both the Negro community and local Episcopal churches. The poverty project is a particularly sore point with the Negro leadership. There has been no breakthrough in employment in Selma, and a resolute refusal by the city to seek any of the Poverty Program funds. SCLC and SNCC workers tried long and unsuccessfully to engage the Mayor and the white establishment in joint sponsorship. At length, fearing Federal support might go to Negro leadership alone,

by default, the Mayor submitted a plan of his own, which, behind a facade of elaborate committees and subcommittees, left final control of funds and program in his hands. It was rejected both by Selma Negroes and in Washington. Meetings continue, seeking a workable compromise, but thus far unavailing. Wenrick was stopped by police from distributing leaflets calling attention to a meeting of the Poverty Program Council. He expected that an appeal to Police Chief Wilson Baker would remove the interference. The boycott of stores by Negroes at Christmas is aimed both at frustration over failure to obtain employment and to launch the Poverty Program. Speakers at the Brown Memorial Chapel recounted how merchants had asked for a reprieve from an earlier boycott, so that they could act "without being under pressure." The boycott had been lifted--and nothing happened. So it is being revived.

Tuesday, I succeeded in reaching Francis Walter, who is also working in Tuscaloosa, Selma, Camden, and Wilcox County. Walter confirmed the impressions I had gained from Wenrick and West about the Selma situation. He added that SCLC and SNCC are involved in a deep re-appraisal of tactics, tending to de-emphasize marches now, in favor of reorganization and cultivation of resources--economic and educational--in the Negro community itself. This is partly in response to the more sophisticated (and frustrating) attitude of the white Establishment, since March. Acts of violence against demonstrators are rare. The new tack is to give them police escort, receive them with a show of cordiality, send them off again, and do nothing!

There is little sign of re-appraisal in the white community. Segregationist literature crowds the newsstands. Radio programs originating in Selma's local station, or linked with the hard right--like Carl MacIntyre's "20th Century Reformation Hour"--din the favorite fantasy into listeners' ears day and night. During the trial, the Selma Times Journal carried a page two photograph of the defendants jovially gathered with their attorney in the court library. But for the caption beneath, one would have taken it for a group of visiting delegates to a Junior Chamber of Commerce convention, just a few fine up-and-coming American young businessmen. Drinking fountains in the Court House are of the cup-and-faucet variety, the fountains having been plugged. Sheriff Clark still proudly displays his gold NEVER button, even in court, as he stalks the corridors with that curiously menacing smile which is the special accomplishment of policemen and Senate Investigators. Doctors' offices downtown still announce Colored Waiting Rooms in the rear. It is alleged that there are five or six chapters of the John Birch Society in Selma. There are no Negro police officers. The hospitals are segregated. During the trial the defense attorney asked Dr. W. B. Dinkins, a Negro physician who first attended James Reeb, whether Good Samaritan Hospital (a Catholic mission hospital) was not in fact the best equipped in Selma. He could not answer, said Dinkins, because he had never been permitted inside the others.

Selma is a small town, even though its internal subdivisions are sharp. Culturally ingrown, it lives in a world but little penetrated by the 20th century, and inclined to close ranks defensively against any incursion in depth. Efforts on the part of Negro and white civil rights leaders to build bridges with their Establishment counterparts have been rebuffed, so far. With white Selma, it is still a family affair, with the tangible virtues and appalling hazards of parochialism.

The Trial

The trial began Tuesday morning (December 7) with Judge Moore's charge and questions to the 104 potential jurymen. News reports have it that 13 among these were Negro. Dan Bickford and I saw only four, and, in any case, none was selected. Several jurymen sought to disqualify themselves on ground of close relationship, fixed opinion, and opposition to capital punishment, and were excused. To the additional stipulation,

suggested in absentia by Alabama Attorney-General Flowers, concerning bias against civil rights workers, two men rose and sought to be excused. It was an interesting look into the Southern conscience struggling with itself. I could not withhold respect from these men, wrestling with fairness, even though they were eventually not excused, having affirmed that if they were truly convinced by overwhelming evidence, they would have to find a verdict of "guilty" despite all. None of those who had sought disqualification were included in the final panel. But one juror proved to be, later, the brother of a key witness of the defense, whose testimony would have to be evaluated by the jury. Why either prosecutor or defense counsel allowed this, I find hard to understand.

The case was tried by Circuit Court Justice L. S. Moore, a paternal and seemingly conscientious figure. From what I saw, I was convinced he sought to conduct the trial with true impariality.

The prosecutor, Circuit Solicitor Blanchard McLeod, was a weak figure, perhaps attributable in part to his convalescence from a recent heart attack, but over and above that obviously reluctant in his role. Deputy District Attorney Virgis Ashworth carried the major burden of the prosecution. He was at his best in discrediting defense alibi witnesses, and in resisting Defense Attorney Pilcher's occasional efforts to make emotional hay with resentment against the civil rights movement as a whole. But he had little to work with. The prosecution's case was meagre. Only three out of six witnesses ever got to the stand at all. Strongest were Clark Olsen and Orloff Miller, whose positive identification of Elmer L. Cook as one of the assailants was never, to my mind, effectively refuted. The fourth witness was declared incompetent, after an inquiry that was itself fantastic, with the witness's medical history including very personal details being paraded before the court by a doctor presuming to offer a psychiatric analysis, although he was not a psychiatrist and had never examined the man in question. The fifth witness, R. B. Kelley, was dismissed since he intended to invoke the Fifth Amendment, being threatened with indictment in a Federal Court for a similar charge. The sixth was in Mississippi, and prudently elected not to come at all.

For a liberal, observing the Fifth Amendment episode was excruciating. There was no doubt of the witness's being in jeopardy, and thus entitled to its protection. At the same time it was the virtual death-blow to the prosecution's case to lose this witness, who may have testified earlier to a grand jury. Was such testimony available, if it occurred? Would it, too, be covered by the Fifth Amendment now? These are distressing, unanswered questions. The prosecution offered no visible objection to the judge's ruling, which was made with apparent reluctance.

As the state rested its case, two things only had been established: 1-Elmer C. Cook had been identified as one of the assailants, and 2-James Reeb had died as the result of the blow received, although his actual attacker was unknown. Judge Moore refused a defense motion, however, to dismiss charges against the Hoggle brothers, insisting that the jury should hear all the evidence.

If the prosecution's case was weak, the defense was ludicrous. It consisted of three points: 1-an alibi for the presence of O'Neal Hoggle at a nearby cafe at the time of the attack, 2-a string of witnesses to attest all three men were dressed in clothing different from that described by Olsen and Miller on that day, and 3-an effort to insinuate deliberate delay and perhaps additional injury to the wounded man, for the purpose of producing a martyr for the civil rights cause.

The first alibi seemed plausible enough, until it was disclosed that the witness 1-was a brother of one of the jurors, 2-was a business partner of Elmer Cook, and 3-that his testimony was being tied to the succession of witnesses on clothing. The

longer this succession continued, the less convincing it became. I was more sure the Hoggle brothers were involved in the attack after the defense had concluded, than when it began. Of the third point, it need only be said that it was as cruel as it was fatuous. Only in Selma could it be taken seriously by a jury, if indeed it was.

I regret that I was unable to stay in Selma for the prosecution's and defense's summations and the judge's charge to the jury. Dan Bickford will fill in details on these. When I heard the radio account of the verdict, later on Friday, I was not surprised, although I had hoped for the possibility of a hung jury--at least that much of a glimmer of conscience in Selma. But there was none. News reports told of applause and joyous greeting of the defendants. The family had come through; our boys were safe again.

Friday morning, before court opened, Solicitor McLeod saw some old friends sitting among the family of the Hoggle brothers. Wreathed in smiles he came over, and there was warm handshaking. Apparently no one doubted it would come out all right. They were not disappointed.

Justice in an Alienated Community

When a determined jury defied both magistrate and the law of the colonies to find John Peter Zenger not guilty of sedition, for his criticisms of the Governor of New York, a powerful blow was struck, not only for the freedom of the press, but the independence of juries. It was also a testament, handwriting on the wall, to the emergence of a new community, later to cut its ties with England altogether. We cite the incident with approval, for the new community is our own.

But Selma is also a severed community. Its cord, cut in the 1860's, has never wholly been repaired. This is ironic, for the same belligerent local pride that alienates it from the overall American community, is deemed to unite it in the more belicose aspects of super-patriotism. This affinity for the violent is mistaken for authentic unity and devotion to American ideals.

To a degree this is the plight of the total Deep South, for whom Americanism is a mixture of hard-core political conservatism, economic atomism, anti-Communism, fundamentalist religion, sex puritanism, and segregation. This is the official Dixie package; and deviation from any particular is viewed as an attack on the whole. In this complex the Negro is welcome only if he accepts "his place." But from Reconstruction days onward, his political ambitions have always been viewed as a menace, the rise of a rival and therefore hostile power center. It is one of the ironies of history that the Southern poor white, whose plight both politically and economically most closely parallels that of the Negro, has been effectively neutered as a force for change by exploitation of race tensions. One of these days he will wake up and discover he has been "had," victimized by his own propensities for hating the colored counterpart. But for the moment he still dwells in the reverie of identity with the white establishment, whose ladder of opportunity he may hope to climb, and to which he does indeed have a marginally better access than the Negro.

Withal its inner contradictions, however, the Southern community is a community, and tensely self-conscious. It has been long under attack by the culture of the 20th century, with its anti-parochialism in politics and world affairs, its religious pluralism, and the drives towards racial equality. The stance of the South is therefore defensive. It has admitted at a superficial and technological level the world of today; but it steadfastly resists the implications of that world for rellgion, morals, and society.

Our American system of law, more particularly our tradition of court action, cuts across such local differences: that is both its majesty and its peril. For the finely-made instrument, with its built-in protections for accused, is only partly responsive to its own precedents. It may function perfectly as an instrument; it cannot escape the influence of the community, working through the persons who set out the drama.

The trial in Selma may have had some defects, but by and large the effect of these defects on the outcome was miniscule compared to the forces with which the court could not possibly cope; which indeed it had to do its best to ignore, by the legal pretense of banishing them, through oaths, and proper instructions to the jury.

The jurors swore to come to an impartial judgment. But could they keep their oath? They could swear not to be swayed by the fact that James Reeb was in Selma as part of a civil rights protest; and the defense attorney could be prevented from ringing the changes on this theme. But could it be eliminated from their thinking? They could try not to recognize the three defendants as neighbors and friends, as members of "our side" in the siege, while the victim was the outsider and thus the enemy. But could this possibly be forgotten? The law prescribed the ultimate penalty for first degree murder. Most people consciously or unconsciously recognize capital punishment for what it is: not justice but retaliation. Could Selma's jurorsby any stretch of imagination be seen calling for the act of vengeance against their compatriots, however dismayed they might be at the consequences of a rash act?

Given the proper requirement that a verdict of guilty must be rendered only if there be not the slightest shadow of doubt, did anyone expect that doubt would be expellable? The climate also affected the prosecution, however valiantly it may have tried to be objective. To proceed with vigor would be to court the enmity of the entire community. It presented the evidence it could not help presenting; there is no sign of any effort "above and beyond the call of duty" to get more.

To say this is not to discredit the courts, but only to recognize the limits of judicial effectiveness. Murder is not murder except in the community that regards it so. And beyond that, murder is not a self-defining act. That would be true only in a universal community, which exists in principle, perhaps, and in legal theory, but not in social fact. Murder is defined by the margins of community consciousness: it depends less upon a man being killed than who he is. Our frustration with the recent civil rights cases comes out of our assumption that there is a single, organic American community, in which American citizens have been killed for working towards legitimate American aims. From this perspective, the slayings are murders. But that is not the perspective of Hayneville and Selma. From their view, conspiratorial and un-American outsiders have been killed by overzealous and perhaps unwise, but basically decent and patriotic defenders of the true way. The circle of community never included these who died. It is manslaughter--perhaps a sop to larger citizenship--but not murder, not in the sense that calls for outrage and revenge, for the "full measure of the law." In this the South is not structurally different from other self-conscious communities. We have no ground for self-righteousness; we are under the same judgment. It is only that for a moment we can see what is operating in our legal system, because in this instance the alienation and contradiction of community-consciousness is so obvious.

The answer to the dilemna is self-evident. Both the death of James Reeb and all his companions in the civil rights struggle, and the infuriating inability of the Southern courts to grapple with the issue, point to the same problem and the same solution. The insularity of the embattled community must be broken. The resources for a larger community must be uncovered and drawn out. It may be possible to accomplish some of this by further exercise of federal authority, extending protection to civil rights

workers, for example, beyond the authority of state governments. But this is not the best answer, a measure to be taken in desperation only. Nor will it directly meet the underlying problem, which is the alienated community.

The only answer is to bring the Selmas and Haynevilles into the American community at a far deeper level than they have yet been willing to come. And this will be accomplished, it seems to me, less by new legislation, than by the quiet but determined work of individuals and groups, to take advantage of the ground already gained, to undercut devisive anxieties, and prepare the way for the voluntary relinquishing of attitudes that are no longer useful nor attractive.

I say this, not to discourage work towards legislation that may yet be needed, nor demonstrations that may yet bear justified witness to wrongs suffered, but to encourage the constructive work at deeper levels without which further progress seems a vain hope. I look for a shift of emphasis, as a sign of American maturing, with the outcome of creating a genuine community in which the James Reebs will not be slain, and the courts will not have to try the slayers. This, I think, is what he would have worked for, too.

II. THE REEB MURDER TRIAL

by Daniel B. Bickford
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The First Day

The courtroom was packed with witnesses, jurors, and spectators. There was no trouble gaining admittance to the Court. There were no police or deputies or court officers checking. I had to stand in the rear of the court, along with 50 to 75 others. The seating capacity of the room was in the neighborhood of 350, exclusive of the seating inside the bar enclosure. Inside the latter, there was ample seating capacity for all counsel, defendants, prosecutors, and others. (The Court is well laid out. The Judge sits where he can be seen and can command; the witnesses are close to the jury; the prosecutor sits directly in front of the witness, and the defendants in front of the Judge.)

The proceedings began with the Judge climbing the few steps to his seat and calling for order. (It took me some time to figure out who the Judge was, as he wore no robe and entered the room without introduction. He carried what appeared to be the docket books. No one stood when he entered the courtroom. There was no indication that he was other than a clerk.) The proceedings began about 9:15 a.m. on Tuesday, December 7, 1965.

The first order was the calling of the State's witnesses, followed by the calling of the defendants' witnesses. The Judge apparently was calling their names from a docket entry which he had in front of him. As the witnesses' names were called, they would step forward to the bar. The State had about 12 witnesses sworn, and the defense must have had about 75. The defense attorney indicated that most of the witnesses he had were character witnesses. The witnesses, with the exception of the character witnesses, were sequestered, that is, they were not allowed to attend the trial.

Next came the qualification of the jurors. This was a process whereby all the jurors stood, were sworn, and then were allowed to sit down while the Judge asked a number of statutory questions. These included: "If anyone was under 21, he was to "inform

the Court;" if anyone was not a resident of Dallas County for the last year, "he was to inform the Court;" if anyone had been indicted for a felony in the last year, "he was to inform the Court;" if anyone was convicted of a felony in the last six years, "he was to inform the Court;" if anyone was related to the defendants, "he was to inform the Court;" and if anyone knew he was mentally incompetent, "the was to inform the Court." (The Judge assumed by the silence of all jurors that the answers were negative.)

Questions as to capital punishment were asked; that is, whether or not there were any jurors who did not believe in capital punishment. There were four such jurors. Questions were asked with respect to belief in the use of circumstantial evidence, and one juror spoke up. On "voir dire" by defense counsel, the answer finally was that he could convict on circumstantial evidence.

Lastly, the solicitor was allowed to ask a question which he read after saying that the Alabama Attorney General, Mr. Flower, had asked that the question be asked. He read the question in a slow, almost inaudible tone. The question was lengthy and was, in substance, as follows:

> "If the evidence was to show that the victim had dined with 'niggras' and had otherwise socialized with them, and if the evidence were to show that the victim felt that 'niggras' were equal to whites, and if the evidence were to show that the victim had come to Selma, Alabama, to assist the 'niggras' in establishing their equlity, would that make the victim such a low person as to effect the juror in his consideration of the guilt of the defendants?"

Apparently because the question was read with such lack of enthusiasm and so inaudibly, the Judge asked if the question was in writing. On learning that the answer was in the affirmative, he asked for the question and read it painstakingly to the prospective jurors. (In my opinion, the question was made clear by the Judge, who read it slowly and paused after words to define them where necessary.)

Three jurors jumped to their feet and indicated that it would prejudice their deliberations. Roy D. Maples said, "I am leaning against a man who came down here from Boston when he should have been preaching up there." W. E. Dozier admitted his bias when he said, "I feel Reeb didn't belong down here!" L. H. Smiterman said "I am sick of civil rights. I have a fixed opinion." Again, the defense took the prospective jurors on "voir dire," and two of the three agreed that it would not effect their decision if the evidence was such that the three defendants in fact committed the crime. The third prospective juror indicated that it would, and he was excused. (The other two were eventually excluded by a State's challenge.)

In my opinion it would have been far better to question each juror individually as to his beliefs on this subject. I am sure that experience must show that it is difficult for a individual to volunteer to give a "yes" answer in front of 350 other persons. However, the question was asked to the group, and each juror, by not volunteering, might feel obligated to the Court to exclude, consciously, any consideration connected with the identity of the victim. Would it have not been better to propound the question individually so that a prospective juror would not have to become a volunteer in exposing his prejudice? I would guess that the prosecution, by lengthy examination of each individual juror, would have been unable to qualify many of them, if the assumption is made that the inhabitants of Selma are hostile to the civil rights worker. As a matter of trial technique, the custom is to examine each juror individually if the attorney wants to eliminate certain people with a bias.

The next procedure was the "striking" of jurors. There were 67 jurors left after the above qualifying procedure. The State was allowed to challenge (eliminate) 13, the defense, 42. (The obvious implication of the procedure needs little comment.) The

jurors who were selected, and their occupation, are as follows:

Billy G. Boozer	Mail carrier
William E. Barrett	Insurance agent
Raymond V. Schiffer	Auto sales manager
Willie C. Ellington	Salesman
Milton L. Adams	Officer - electric company
T. Maynard Busby	Grocery manager
William W. Vaughan	Own company
M. Woods Culpepper	Logger
Cecil O. Campbell	Truck driver
J. Cooper DeRamus, Jr.	Cigar store employee

It should be pointed out that there were four Negroes in the pool, but they were eliminated by the defense.

After the striking of the jurors, the prosecution made its opening statement to the jury. The statement was made by the Circuit Solicitor, Blanchard McLeod, and was very short. The Solicitor said that he would show that the three defendants "did the killing." He then went on to say that, because of a heart attack, his doctors had ordered that he not try a case until after the first of January, and that he was turning the prosecution of this case over to Mr. Virgis Ashworth. Mr. Ashworth is a former state representative; it is my understanding that this is the first case in which he has participated as a prosecutor.

The defense then made an opening statement which in substance outlined their defenses. The defense would be that the wounds that the Rev. Mr. Reeb received were not the wounds which caused his death, and that the wounds were "altered" from the time that he was in Selma to the time that he was seen in Birmingham. The second defense would be that the defendants were not in the area when Reeb was attacked. More specifically, O'Neal Hoggle was in a restaurant and Elmer A. Cook and Stanley Hoggle were at their places of business. There were three witnesses who would testify to these facts. The defense also pointed out that they would show that there were three or four other groups of persons in the area at the time of the assault, and that these groups could have and probably did cause the injuries.

The first witness was then called by the State. He was the Rev. Clark Olsen. Mr. Olsen identified himself as a clergyman from California. When asked who his attackers were, Mr. Olsen identified Cook from more than 300 people in the Courtroom, and the identification was made by standing and pointing to that specific defendant. With respect to the other attackers, he was only able to say that the two Hoggle brothers were similar in appearance, but he could not "positively' identify them, and that "they resembled to some degree the men I remember attacking me." He did ask the Judge if the other two defendants would stand, but the Judge said "no."

Mr. Olsen testified that he had had dinner at Walker's Cafe on Washington Street some time between 5:30 p.m. and 6:00 p.m., and that he remained in the Cafe from 1½ to 2 hours. He estimated that it was about 7:30 p.m. when he and the Rev. Orloff Miller and the Rev. James Reeb left the Cafe and turned right on Washington Street, and that it was a few moments later that they were attacked near the Silver Moon Cafe at the intersection of Washington Street and Selma Avenue, He testified that, as they neared the Silver Moon Cafe, "our attention was attracted by some men who started to come after us from across the street. They shouted at us and came in a threatening manner." He said that there were four or five men, and that the group continued walking for 12 or 15 feet. He testified that one of the attackers was carrying a stick or pipe, "an object of some length." Reeb was walking on the street side, slightly behind him, and Miller was in the middle, whereas he, Olsen, was on the building side. He stated that he saw one of the men swing the stick or club and

hit Reeb on the side of the head. He saw Miller crouch down to avoid a blow, and he himself ran a few steps away from the attackers. One of the attackers, however, came at him. He testified that he was caught after running a few steps and was struck several times and lost his glasses. He testified, "I had an especially good view of the man attacking me. I turned to face him. I raised my arms to protect myself and saw him as he hit me." When the brief attack stopped, he stated that he looked back and saw one or two of the men (attackers) kicking Reeb and Miller. Olsen established the duration of the attack to be about 30 seconds.

After the men had withdrawn, and he did not know in which direction, he returned to the side of Miller and Reeb to see if he could aid them. He described Reeb as being badly hurt and unable to speak coherently immediately after the beating, his words babbling out.

He and Miller assisted Reeb to his feet, had him lean against the building, and when he was able to speak, and appeared to be conscious, they helped him to the Boynton Insurance Agency. As far as he was concerned, Olsen could only observe a small wound. Reeb, however, complained of a terrible headache.

In describing the man who attacked him, Olsen again said he had a "very good view of the man who attacked me."

Olsen stated in great detail the subsequent events at the Boynton Insurance Agency, where they finally got an ambulance and took Reeb to the Burwell Infirmary in Selma, where he was treated by Dr. Dinkins, a Negro physician. It was here that Reeb's condition worsened, and he lapsed into unconsciousness. Arrangements were made by Dr. Dinkins for Reeb to be moved to Birmingham for treatment by a neuro-surgeon. On leaving the Burwell Infirmary, for Birmingham, and about four or five miles out of town, the ambulance got a "flat rear tire," and they decided to return to Selma. On returning, they drove to a local radio station where they called for a second ambulance and made a telephone call for police protection. After placing Reeb in the second ambulance, they returned to the Boynton Insurance Agency to pick up a check for $150 which they had learned would be required to have Reeb admitted to the Birmingham Hospital. In the meantime, Dr. Dinkins was obtaining an automobile so that he could follow the ambulance.

Olsen went on to testify in some detail as to the events which took place at the Birmingham Hospital where he said they arrived at about 11:00 p.m. Reeb had still not regained consciousness.

With respect to the cross-examination of Clark Olsen, the defense attorney apparently had use of the FBI report. There was an attempt to show photographs to the witness, as well as earlier statements which had been made to investigators. Olsen testified in cross-examination that he had lost his glasses in the attack. On further cross-examination, the defense brought out that Olsen had arrived in Selma from California less than four hours before Reeb was fatally beaten and that he had come to Selma to join in the demonstrations because he felt that he wanted to come as an individual to lend his assistance. He was asked questions as to whether or not he was a pacifist. He said he was not. He admitted that he had been driven from Montgomery to Selma in a car chauffeured by a Southern Christian Leadership Conference driver. Upon his arrival in Selma, he went to hear the Reverend Martin Luther King, Jr. After that meeting, and subsequent to the march, he went to Walker's Cafe. (Walker's Cafe is apparently a well-known Negro restaurant in Selma. Attempts were made to point out this fact by asking questions such as, "Who was in the Cafe?" etc.)

The trial recessed at 4:30 p.m., with Olsen still on the stand.

The Second Day

Olsen was on the stand at the beginning of the second day. Under cross-examination, he testified that, in his opinion, Cook was not the man who struck Reeb, but he was positive that Cook was the man who struck him.

The second witness called was the Rev. Orloff Miller, who identified himself as a Unitarian Universalist clergyman from Hingham, Massachusetts. Miller testified that he was able to identify Cook as the leader of the group which attacked Olsen, Reeb, and himself. He further testified that since the other men's lives were at stake, he could not be positive, but they definitely were men he had seen on that day.

Miller testified that he had been in Walker's Cafe, but had left about five minutes before the others to go outside for a cigar, and that the others, Reeb and Olsen, joined him outside and started to walk toward the intersection of Washington Street and Selma Avenue, where they planned to turn right and proceed to the Boynton Insurance Agency. As they were walking, four or five white men came from between parked cars, one shouting, "Hey, you niggers." They thereupon quickened their pace, the men approached from behind and to the left. Miller testified that "Jim was struck to the pavement. I heard the blow." He further testified that he immediately turned around, dropped to the pavement in a crouched position, as he had been taught to do, and was attacked or kicked on the forehead and on the arm. He described the attack as "an eternity, but was probably about 30 seconds." He testified that he saw the attackers and that he could identify them, whereupon he rose and identified Cook and stated that he was in the lead of the attackers that night. He went on to describe what subsequently happened after the attackers left, and the problems which they had in getting Reeb to Birmingham. Miller told about going to the Boynton Insurance Agency, getting an ambulance from the funeral home, going to Burwell Infirmary, proceeding out of town, proceeding to the radio station, getting a second ambulance, getting the money, and starting off for Birmingham with Dr. Dinkins following. In answer to a question by the prosecutor, Miller said that he had kept notes and stated that they arrived in Birmingham at about 11:00 p.m.

In cross-examination, Miller was asked to designate the position that he took during the attack, and he did this. He then agreed that he saw little after the attack began. He recalled that it was not dark, but that the street lights had come on while he was outside smoking his cigar. He did not see the instrument that hit Reeb, but he did reaffirm that he got a good look at the lead man.

Miller described in great detail the ambulance trip, and it was brought out that the injured man was not lying on his stomach, that there was no emergency equipment, such as oxygen tanks and respirators used to keep the circulatory passages open. Miller described Reeb as being unconscious, and in great pain. He further testified that he did nothing because he knew of nothing to do.

The prosecutor went into great pains to inquire of Miller whether or not the wound which Reeb suffered was a "compound, communated multiple skull fracture." There was no objection raised by the prosecution to these questions, but Miller said that he was not familiar with this terminology.

The prosecution did suggest that the defense describe such a wound, which the defense did, and that the skull "would be crushed like an egg shell with fragments of bone penetrating through the skin." With this description, Miller asked whether or not such a condition would go unnoticed immediately after an injury, but would develop as pressure increased from swelling.

Miller further testified that on the ambulance trip to the Birmingham Hosptial, the stretcher did not fit the ambulance and had to be kept up against the side by him. He said that it had a tendency to roll.

A waitress, Ouida Larson, who worked at the Silver Moon Cafe, testified that she saw Cook and the two Hoggles together in the Cafe some time between 6:30 p.m. and 8:00 pm. On cross-examination, she was unable to pinpoint the time, and she said that she heard nothing about the beating until the next day.

The remainder of the day was taken up with the qualifying of an "incompetent" witness, Edgar W. Stripling. The Public Safety Director of Selma, Wilson Baker, and Peter Lackeos, testified, as well as Dr. DeBardeleben.

Wilson Baker testified that he had noticed Stripling, who was a part-time employee at the Silver Moon Cafe, shadowboxing with parking meters, and, on occasion, talking with his coffee cup and saucer. Mr. Baker was put on by the defense with the intention of giving evidence to disqualify the State's proposed witness. Stripling had already been sworn and had answered questions with respect to his being able to tell the difference between truth and fantasy. He had then been excused so that the defense could put on some witnesses.

Following Wilson Baker to the stand, Peter Lackeos (who spoke with a foreign accent and was difficult to understand) identified himself as the owner of the Silver Moon Cafe, and as the employer and friend of Stripling for a great many years. He testified that Stripling had told him of fights which he claimed had taken place at the Cafe during his absence, and which he knew had not taken place.

Dr. DeBardeleben was called to the stand by the defense and testified that he specialized in internal medicine and that he was a general practitioner in Selma. He read extensively from Veterans' Administration records which indicated that Stripling had been in and out of Veterans' hospitals on a number of occasions. The last time was in 1959, and indicated that Stripling was a residual schizophrenic. The doctor said that certain types of this illness make it impossible for a patient to distinguish between fact and fantasy at times. He further testified that he did not know Stripling and had never examined him, and that the only information he had was obtained from the records of the Veterans' Administration.

At this time it should be noted that the State made no attempt medically to qualify this witness, nor did it object to the testimony of a general practitioner. On the other hand, however, when the doctor was testifying as to his qualifications, the State admitted that he was a qualified doctor. There is no indication on the record as to the qualifications of the defense's expert on mental illness. The evidence is quite strong to the contrary, in that the doctor is a general practitioner, had made no examination of the proposed witness, and was basing his so-called opinion testimony solely on the basis of records, the last entry in which was made six years prior to his testimony. At the most, he testified that it would be difficult for the proposed witness to determine the difference between truth and fantasy. Alabama has a statute which permits a Judge to disqualify a witness if the witness, at the time of his testimony, does not understand the oath which is being administered. * There certainly was no testimony that this witness did not understand the oath at the time it was being administered.

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* The Statute reads: "Persons who have not the use of reason, as idiots, lunatics during lunacy, and children who do not understand the nature of an oath, are incompetent witnesses."

The Judge found that the witness was disqualified and stated: "I realize that it is a serious thing to determine whether a man is competent to testify. He might be able to tell the truth or he might not, I do not know. But I feel it would not be right to lay this witness before the jury in the face of his medical record and ask them to take credence in what he has to say."

The Third Day

The next witness to be called by the State was Mr. R. B. Kelley. (Kelley was arrested with the three defendants, but was never indicted.) The defense objected to Kelley's testifying, and represented to the Court that there were Federal conspiracy charges still being considered which would involve the same matters which this witness would be required to testify to and that the witness had availed himself of the Fifth Amendment privilege. The State argued that it should be allowed to ask Kelley questions and that, as to those questions which he felt would incriminate him, he could avail himself of the Fifth Amendment. The Judge would not allow this and stated in effect that he could not imagine any question which would not also be involved in the conspiracy case and, therefore, he would not require the witness to testify. (The State made no effort to argue that the witness might well be granted immunity, if he was forced to testify, although this is a debatable point because immunity may not be effective to forestall a Federal Court proceeding.) What is not clear with respect to Kelley is whether he had ever given any statements before the Grand Jury or whether he had otherwise waived his privilege through prior testimony.

Dr. Dinkins was called by the prosecution and said that he examined Reeb around 8:30 p.m. at the Burwell Infirmary. His initial examination indicated that Reeb suffered a laceration and contusion of the left temple, and he ordered an X-ray taken, but it was not good enough to read. In the meantime, he reported that the condition of the injured man worsened and the symptoms showed that he had sustained an injury of a type that required additional study and treatment. Dr. Dinkins thereupon made arrangements for Reeb to enter University Hospital in Birmingham. He testified that there were no neuro-surgeons in Selma. On cross-examination, he testified that he was not able to determine whether Reeb had a skull fracture, and there was no indication on his first examination that there was pressure on the brain, but that within 10 minutes he did note pupillary reflexes which would indicate that pressure was being exerted on the brain.

He testified that, on the trip to Birmingham, the first ambulance threw a recap, and it became necessary to return to Selma and that they called for a second ambulance from a radio station. While that was coming, he said that he returned to pick up his own car.

He testified that Reeb received no treatment prior to his arrival in Birmingham, and that there were no respirators, tubes, or oxygen used to keep the air passages clear and that he gave no instructions to the ministers who rode with the victim. He further testified that, on the trip to Birmingham, there was a 10 to 15 minute delay while he got his car, and that the reason for his getting his automobile was that they were unable to get assistance from law enforcement officials. They left Selma for Birmingham at 9:30 p.m.

(I wonder why the prosecution called Dr. Dinkins, in that he really added nothing to the State's case. On the contrary, his testimony was not only embarrassing for him, but indicated that he was probably ill-equipped to handle this type of injury.)

Dr. Dinkins was asked, on cross-examination, why he did not take the patient to a Selma hospital, and pictures were introduced to show that the hospital in Selma was a rather modern facility. He stated that he had never been asked to step foot in the hospital.

Following Dr. Dinkins' testimony, the depositions of four Birmingham doctors were introduced by the State, although they had been taken by counsel for the defendants. The procedure which followed was for the defense counsel, Mr. Pilcher, to read the questions, and for one of his assistants, Mr. Radford, to read the answers.

Dr. Thomas H. Allen testified by way of deposition that he had administered to the patient by performing a tracheotomy and assisting in surgery to relieve the pressure on the brain. It was his opinion that Reeb died as a direct result of the head injuries.

Dr. James Argires, the neuro-surgeon at the University Hospital, outlined in detail the emergency operation performed. He testified that it was his opinion that Reeb died because of irreversible brain damage, and that the severe cranial head injury "would have led to death" in any patient.

Dr. Stanley Graham, another neuro-surgeon, testified that he had seen Reeb in the operating room and that it was his opinion that the fact that none of the usual procedures for dealing with vomiting were employed and the respiratory passages were not kept clear might have contributed to Reeb's death. This doctor also said the delay in getting Reeb to the hospital played a significant part and that, if Reeb had arrived one hour earlier, there would have been a greater chance of survival, and that the delay "seriously impaired" Reeb's chances for survival.

The final deposition was that of Dr. Ernest S. Tucker, a pathologist at the University Hospital, and it was through this deposition that 13 autopsy pictures were introduced. The autopsy disclosed that pneumonia contributed to some extent to the death of the patient, but that death came as a direct result of complications following one or more blows to the head.

The last witness to be called that day was Dr. Robert G. Johnson, a state toxicologist, who observed the autopsy. It was his opinion that Reeb died as a result of brain damage and pneumonia, both of which were direct and indirect results of the blow. He described the fracture resulting from the blow or blows as severe in the sense that it was severe compatible with life, but not severe to the extent of what one would expect to see if a person had been hit by a railroad train. He further testified that such an injury would result in almost certain death, if untreated. In cross-examination, he stated that, in his opinion, if competent continuing treatment had been given immediately, the survival rate would be something like one out of two or one out of three.

The Fourth Day

At the opening of the session, the State said that it had one material witness which it was trying to convince to come to Selma from Mississippi, Billey Edwards, of Greenville, Mississippi. Mr. Ashworth stated that he had talked with Edwards on the telephone and that Edwards had indicated that he would come to Selma on the first available plane. The Court recessed for 45 minutes, and Ashworth made another call. He said that he called the man's employer, and that Edwards had gone to work and was making no effort to return to Selma. Ashworth also said the Edwards had been a resident of Selma on March ninth. (There is no indication that the prosecution had exhausted all efforts in trying to obtain the testimony of this witness, and there is a Federal fugitive statute which makes it a Federal offense for a material witness to flee from the jurisdiction of a state in order to avoid giving testimony. In any event, the subject of this testimony is not known.)

This ended the State's case. The defense moved for a directed verdict as to the Hoggle brothers, and the Judge denied this request.

The defense then made its opening statement, and indicated that it would show that the defendants were not present, that there were intervening events which caused Reeb's death, and that, in fact, the death was caused by a fourth person. The first witness called by the defense was Selma Public Safety Director, Wilson Baker.

Mr. Baker testified that there was a great deal of tension in Selma on the day of the fatal attack, but was prohibited from testifying by the Court as to what caused the tension. The questions indicated that the defense was trying to show that it was caused by the Reverend Martin Luther King, Jr., and the civil rights workers who were in town. The defense attorney, in a speech after the judge excluded the statements, charged that the civil rights workers needed a "martyr," and that these groups were willing to let him die. He said, "I propose to show (by the questions) that there was motivation on the part of other persons to injure Rev. Reeb or willfully permit him to die. . . There was motivation on the part of certain civil rights groups to have a martyr. . ." Baker admitted that his department received the first call on the assault from a nurse at Burwell Infirmary, and placed the time around 7:50 p.m. He said that he sent patrol No. 22. He testified that he was unable to afford protection to all of the people in town on that day. Baker further testified that he had been looking for Floyd Grooms since that day in connection with the attack.

Following Baker, F. J. Ellison, a Selma policeman who was in Car 22, the car sent to the Burwell Infirmary, said that he interviewed both Miller and Olsen at the infirmary with respect to being able to identify the individuals who attacked them. They said that they were unable to identify the individuals. On cross-examination, it was learned, however, that what the policeman meant by identification was ability to swear out a warrant and identify the attackers by name.

Following Ellison's testimony, General MacArthur Brown testified that he was in the restaurant, but had not eaten there. He testified that it was approximately 7:00 p.m. when he followed three ministers out of the restaurant and followed them down Washington Street to Selma Avenue and saw nothing happen. He did say, however, that he saw Cook standing in the doorway of his store when he left. He placed the time around 7:00 p.m. He further testified, on cross-examination, that he was a friend of Cook and that he did not know whether or not the three men that he followed were the three men who were later attacked. He testified that there were other white men in the Cafe that night, and the three could have been others. He denied that he had told the FBI agents that Stanley Hoggle stood and looked into the window of the Cafe while he was inside.

The next witness was Mr. George Hamm, a retired Baptist minister working as a janitor in a local factory. He appeared to be a rather reluctant witness. He testified that he had gone into the Silver Moon Cafe to try to make a telephone call between 7:00 p.m. and 7:30 p.m. When the phones were busy, he decided to telephone from outside, on Washington Street. He placed the time of his call at around 7:30p.m. Hamm testified that he noticed an assault on the other side of Washington Street and it looked like somebody running together. He said that it wasn't light and it wasn't dark. After the assault, he went into the Coffee Pot Cafe where he saw Edgar B. Vardaman, who was standing at a counter. He was unable to identify any other individual in the Cafe. He was unable to identify the attackers, as they "just flushed out like birds." He did see an individual drop to his knees or all the way to the pavement.

The next witness to take the stand was Edgar B. Vardaman, who stated that he went into the Coffee Pot Cafe with O'Neal Hoggle, and that he (Hoggle) was making a telephone call when Hamm came into the Cafe and mentioned the incident. Vardaman, however, testified that he was sitting down when he spoke to Hamm.

Vardaman then identified three sets of clothing which he remembered were the exact clothes which the three defendants wore that day. One was a blue service station uniform, worn by O'Neal Hoggle, another was a suit worn by Cook, and the third was a sport jacket worn by Stanley Hoggle. Needless to say, on cross-examination, Vardaman admitted that he wasn't sure that they were the same clothes. He further testified that he was a business associate of O'Neal Hoggle. (This witness is the brother of one of the jurors, and it should be pointed out that the State should have known of the relationship prior to the time the jury was selected, because the defense had listed their prospective witnesses and had had them sequestered. Also, the witness himself probably should have known that he was to be called because the nature of his testimony was that of an alibi witness which means that he must have gone over it with the defense. In any event, it is apparent that the prosecution should have moved for a mistrial because of the relationship between the witness and the juror. It would be difficult for a juror to disbelieve his own brother's testimony.)

Following Vardaman to the stand, the manager of the Coffee Pot Cafe, Mrs. Frances Bowden, testified that O'Neal Hoggle was there about 7:30 p.m. She further testified that she left with Vardaman to go to supper at the Bamboo Club.

Following Mrs. Bowden's testimony, Paul Woodson, one of the owners of the Bamboo Club, testified that he saw all of the defendants at the Club between 8:00 p.m. and 9:00 p.m. on the night of March ninth.

On cross-examination, Woodson testified that he could not remember any other person at the Club that night, and he did not remember Mrs. Bowden and Mr. Vardaman. Following Woodson's testimony, the other owner of the Bamboo Club testified that he was at the bar and that the only person he recognized in the Club that night was Cook. He did not see the other defendants, nor could he remember the names of any other persons in the Club, even though he was familiar with both Vardaman and Mrs. Bowden.

The next witness to testify was J. South, a bread man, testifying that he was at Buchanan's Service Station with Charles Buchanan. He saw the ambulance go by, heading toward Birmingham. and decided to follow that ambulance, since it was going in the direction of his home. The ambulance turned around, and he followed it back to the radio station where it stopped. He said that it was traveling at a slow rate of speed on the way back. He examined the ambulance and found nothing wrong with it, but another ambulance came along with a faulty signal light which he fixed. He further testified that he left the radio station briefly to get Mr. Buchanan to have him call the police, as he felt that something funny was going on. South testified that it was some 30 to 50 minutes before the ambulance departed, and that no one was doing anything for the patient during that time. On cross-examination, South admitted that he was making it his business to find out what was going on. (The implication was that he was a trouble maker.)

Following South's testimony, Charles Buchanan, the owner of the service station, testified that he saw the ambulance go by his station as he was closing up, and that he later had a chance to examine the ambulance at the radio station and found that there was nothing wrong with the tires.

The next witness to be called was Paul Bodiford, an auto repairman. He testified that he arrived at the Silver Moon Cafe at about 6:30 p.m., after observing the rally at Brown's Chapel and the march on Water Street. He said that he drank beer inside the Cafe for 30 or 40 minutes and then went outside, and that he saw nothing happen until he left at about 8:00 p.m. He testified that he was standing outside for most of the time between 7:00 p.m. and 8:00 p.m., except when he went to get a bottle of

wine. He said that he was standing with Floyd Grooms, and that Grooms had been talking and was telling him about a fight with a group of civil rights workers and of Grooms' attempt to upset a station wagon. Bodiford said that he had not seen Grooms since. He said that another man, Winston Smith, was standing outside with him. With this testimony, the defense rested its case. The time was about 11:20 a.m.

Before lunch the prosecution made a brief argument. Mr. Ashworth told the jury that he expected that they would do their duty as jurors; that they would find a true verdict according to their consciences. He told the jury that he was not "sticking up" for the civil rights workers, but that the system of justice was on trial. He told them it was an important case and they must do their duty, "as he knew they would."

After the brief opening (about five minutes), the jury went to lunch. After lunch, the defense argued and reviewed the evidence. The defense rested heavily on the lack of identification implicating the two Hoggles. Very little was said about the defendant Cook, except that he did not deliver the blow. Argument was made concerning the injuries not being the same and that the treatment which Rev. Reeb received was "grossly negligent."

Following the defense's argument, the prosecution closed by pointing out that the Judge would charge that the defendant Cook need not be identified as being the person delivering the blow, as long as he was a member of a group, one of which did deliver the blow.

The Judge's charge to the jury was very good, in my opinion. He charged with respect to each and every element of manslaughter in the first and second degree and murder in the first and second degree, and said that they could find each and every defendant guilty of any one of those offenses. He also charged that it was not necessary to identify the defendant who struck the blow; that it was only necessary to find one or all of the defendants were part of a group that contained an individual who struck the fatal blow. (The law of Alabama, much like that of the Federal Government, has abolished the distinction between accessories before and after the fact, as well as principals in the first and second degree.) The Judge continually used Cook as an example in the charge, but at all times, he made it clear that what he was saying applied to the Hoggle brothers, as well.

The jury returned a verdict of "not guilty" as to all defendants in 97 minutes after they began deliberations, a most unusual occurrence.

There was no real defense offered for the defendant Cook, except that during the day he was wearing a dark suit, as compared to what Mr. Miller and Mr. Olsen described as a light suit. The defense's own witnesses clearly put Elmer Cook at the scene, and the State's witnesses made him one of the attackers. The Judge charged that this would be enough to convict. The jury took only a limited hour and one-half to determine otherwise. In my opinion, the case involving Cook should have taken a great deal longer to consider. This belief is bolstered by the reported fact (although inadmissable as evidence) that Elmer Cook had been arrested 25 times and charged with assault and battery on 17 occasions.